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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	Group Art Unit: **2617**
Thomas E. Coverstone	§	
	§	
Serial No.: **10/020,094**	§	Examiner: **Bryan J. Fox**
	§	
Filed: **December 13, 2001**	§	
	§	Atty. Dkt. No.: **02820.0003.NPUS00**
For: SYSTEM AND METHOD FOR WIRELESS	§	
TELECOMMUNICATIONS NETWORK	§	Confirmation No.: **9964**
	§	
	§	
	§	

APPEAL BRIEF

TABLE OF CONTENTS

Page

I.   <u>**REAL PARTY IN INTEREST**</u>

The real party in interest is Thomas E. Coverstone, the Inventor of Record.

II.   **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences known to Appellants that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III.   <u>**STATUS OF CLAIMS**</u>

As of the final rejection and advisory action, claims 10-47 are pending in the application. Claims 1-9 were cancelled in the Response to Office Action dated July 1, 2005 that was submitted on November 1, 2005. Claims 12-47 were submitted as new claims in the Response to Office Action dated July 1, 2005. All of the claims were rejected in the Final Office Action dated March 10, 2006 and in the Advisory Action dated May 31, 2006.

Therefore, claims 10-47 are on appeal. These claims are subject to a final rejection based on 35 U.S.C. § 102(b).

IV.   **STATUS OF AMENDMENTS**

Subsequent to the final rejection, Appellants cancelled claims 1-9, amended claims 10 and 11, and entered new claims 12-47 in the Response to Office Action dated July 1, 2005 that was submitted on November 1, 2005. The Final Office Action dated March 10, 2006 indicates that all claim amendments were entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Introduction

The present invention relates to a wireless communication system that is used with a wireless communication device and a position location system, the wireless communication device being capable of communicating with the position location system. The wireless communication system includes a memory device for storing position locations of the wireless communication device and for storing transactions made relating to the wireless communication device, a processor for determining trends by recalling stored information from the memory device and processing the recalled information, and a transmitter for transmitting targeted broadcasts to the wireless communication device based on the current location of the communication device.

B. Independent Claims

The pending independent claims are claims 10, 11, 14, 18, 22, and 35.

C. Description

In the instant application, for example, claim 10 recites a wireless communication system including a memory device for storing position location data for the wireless communication device, a processor for determining trends in the position location data by recalling stored information from the memory device and processing the recalled information, and a transmitter for transmitting targeted broadcasts to the wireless communication device at least based on the determined trends.

The main components of the system are illustrated by Figure 1 and 5. A memory device for storing data is discussed on page 6, second paragraph and page 7, first paragraph and is illustrated by Figure 3. A processor for determining trends in the position location data by recalling stored information from the memory device is discussed on page 6, second paragraph and Figure 3. A transmitter is described on page 5, eighth and ninth paragraphs, and page 6, first paragraph.

Additional components of the system are also disclosed in the specification. Trends in the position location data and trends in the transaction data are described on page 7, first paragraph to page 8, third paragraph. Transmitting targeted broadcasts and transmitting targeted

7

advertisement broadcasts are described at page 8, paragraph 2 and page 9, paragraph two. Targeted broadcast is described by the abstract; page 4, paragraph 4 ("a transmitter for transmitting targeted broadcasts to the wireless communication device"); Figure 6; page 7, paragraph 2; page 8, paragraph 3; and page 9, paragraph 2. Determining trends in the position location data, recalling stored information from the memory device, and selecting a targeted broadcast audience are described at page 8, paragraph 2 to page 9, paragraph 2.

VI.   <u>GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL</u>

The ground of rejection is whether claims 10-47 are anticipated under 35 U.S.C. § 102(b) by United States Patent Number 5,999,126 (*Ito*).

VII. **ARGUMENT**

A. Rejection under 35 U.S.C. § 102(b) as Anticipated by *Ito*

Claims 10-47 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Ito*. The Examiner maintains that "the broadest reasonable interpretation" of Applicant's claims is anticipated by *Ito*. Applicant has consistently traversed these rejections throughout prosecution. As discussed hereinbelow, Applicant believes that the Examiner has overstated the teachings of the *Ito* reference, and has accordingly failed to present a *prima facie* case of anticipation in accordance with established Federal Circuit case law.

1. *The Proper Standard for Anticipation and Claim Construction*

To establish *prima facie* anticipation based on 35 U.S.C. § 102(b), the Examiner must show, "the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States." It is well-established that to anticipate a claim, a single piece of prior art must show each and every claim element. *Hybritech, Inc. v. Monoclonal Antibodies*, Inc., 802 F.2d 1367, 1379 (Fed. Cir. 1986).

As noted by the Examiner, a disputed claim term should have its broadest reasonable interpretation during patent prosecution. *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). The so-called "broadest reasonable interpretation" rationale recognizes that "before a patent is granted the claims are readily amended as part of the examination process." *Id.* However, despite the "broadest reasonable interpretation" rule, each and every word in a claim is still significant in determining the meaning of a claim limitation. *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004) (holding that defendant's claim construction impermissibly read-out the term "operatively" out of the phrase "operatively connected).

Claims "must be read in view of the specification, of which they are a part." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005). The specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Id.* The claims themselves also provide substantial guidance as to the meaning of particular claim terms. *Id.* at 1314 ("the context of the surrounding words of the

claim also must be considered in determining the ordinary and customary meaning of those terms"). In *Phillips*, the Federal Circuit noted that the claim term "steel baffles" strongly implies that the term "baffles" does not inherently mean objects made of steel. *Id.*

As demonstrated below, the Examiner has failed to consider each and every claim element in maintaining his anticipation rejection, and thus has not made a *prima facie* showing that the *Ito* reference alone anticipates the present claims.

2.   *Ito Does Not Describe the Claimed Invention*

Ito discloses a position measuring system or navigation system for an automobile using a combination of GPS and PHS radio signals. In particular, *Ito* is directed to calculating position location from radio waves of PHS base stations when a GPS signal cannot be received. As noted by the Examiner, "a current position may be estimated to some degree from a previous history." *See* col. 10, ll. 28-30. *Ito* then describes this estimation as merely a location estimation made by linear extrapolation of two previous location points. *See* col. 10, ll. 31-39 and Fig. 11C. As best shown in Fig. 12, *Ito* also describes a means for displaying service signals such as traffic, weather, news, and advertisements if the automobile is within the reception range of the PHS base station.

Ito does not disclose each and every element of independent claim 10. Claim 10 requires a processor for determining trends in position location data and a transmitter for transmitting targeted broadcasts at least based on those trends. *Ito* does not disclose a processor for determining position location trends, but does have the ability to estimate an automobile's current location based on a linear extrapolation of two previous known locations. Further, *Ito* does not disclose a transmitter for transmitting targeted broadcasts based on position location trends. Instead, *Ito* teaches a unit located on an automobile that is capable of receiving a service signal (not sent to any specific audience) transmitted from a PHS base station. Such a service signal is received by the automobile if it is within the PHS base station transmission range. *Ito* does not disclose transmitting a targeted broadcast, and further does not teach transmitting a targeted broadcast based on position location trends.

Similarly, *Ito* does not disclose each and every element of independent claim 11. Claim 11 requires a processor for determining trends in transaction data, and a transmitter for transmitting targeted broadcasts at least based on those trends. *Ito* does not disclose a processor

for determining transaction trends. As disclosed in the present application, transaction trends may be developed from a user's responses to past broadcasts and other history including geographic history, chronological history, family history, seasonal history, and usage patterns. Further, *Ito* does not disclose a transmitter for transmitting targeted broadcasts based on transaction trends. As discussed above, *Ito* teaches a unit located on an automobile that is capable of receiving a service signal (not sent to any specific audience) transmitted from a PHS base station. Such a service signal is received by the automobile if it is within the PHS base station transmission range. *Ito* clearly does not disclose transmitting a targeted broadcast, and further does not teach transmitting a targeted broadcast based on transaction trends.

Ito also does not disclose each and every element of independent claim 14. Claim 14 requires a processor for processing position location data, and a transmitter for transmitting targeted broadcasts at least based on the processed position location data. *Ito* does not disclose a transmitter for transmitting targeted broadcasts based on processed position location data. As discussed above, *Ito* teaches a unit located on an automobile that is capable of receiving a service signal (not sent to any specific audience) transmitted from a PHS base station. A service signal is received by the automobile if it is within the PHS base station transmission range. *Ito* clearly does not disclose transmitting a targeted broadcast, and further does not teach transmitting a targeted broadcast based on processed position location data.

Ito also does not disclose each and every element of independent claim 18. Claim 18 requires a processor for processing position location data, and a transmitter for transmitting targeted broadcasts at least based on the current location of the wireless communication device. *Ito* does not disclose a transmitter for transmitting targeted broadcasts based on the current location of the wireless communication device. As discussed above, *Ito* teaches a unit located on an automobile that is capable of receiving a service signal (not sent to any specific audience) transmitted from a PHS base station. Such a service signal is received by the automobile if it is within the PHS base station transmission range. *Ito* clearly does not disclose transmitting a targeted broadcast, and further does not teach transmitting a targeted broadcast based on the current location of the wireless communication device.

Ito also does not disclose each and every element of independent claims 22 and 35. Claim 22 requires a processor for processing stored data and selecting a targeted broadcast

audience, and a transmitter for transmitting targeted broadcasts to the targeted broadcast audience. Similarly, claim 35 is a method claim requiring the steps of selecting a targeted broadcast audience and transmitting a targeted broadcast to the targeted broadcast audience. As discussed above, *Ito* teaches a unit located on an automobile that is capable of receiving a service signal (not sent to any specific audience) transmitted from a PHS base station. Such a service signal is received by the automobile if it is within the PHS base station transmission range. *Ito* clearly does not disclose a processor for selecting a targeted broadcast audience or a transmitter for transmitting a targeted broadcast.

3. *The Anticipation Rejection Over Ito Should Be Reversed*

The Examiner has not provided any instance of *Ito* describing a system sending a "targeted broadcast." The Examiner's conclusion that *Ito*'s indiscriminate broadcast to an unspecified group is anticipatory impermissibly reads the word "targeted" out of the claims. Such a conclusion is well beyond the legal limits of the "broadest reasonable interpretation" of the claims. Furthermore, the Examiner has not shown any example of *Ito* manipulating data to select a "targeted broadcast audience" to receive a targeted broadcast. Additionally, the Examiner has not illustrated any way that *Ito* describes a "targeted advertisement broadcast." Instead of searching for a reference that discloses each and every claim limitation of the instant application, the Examiner instead simply ignores those limitations. The *Ito* reference does not show each and every claim element of the pending claims as required by controlling case law, and thus a *prima facie* case of anticipation does not exist.

Accordingly, Appellants urge the Board to reverse the rejection under 35 U.S.C. § 102(b) as anticipated by *Ito*.

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This Appeal Brief is filed within two months from the Office date of receipt of the Notice of Appeal in accordance with MPEP 1205.01. No extension fees are believed to be due. The Commissioner is authorized to deduct the filing fee of $500 for the appeal brief from Deposit Account No. 08-3038/02820.0003.NPUS00. Should any additional fees under 37 C.F.R. §§ 1.16

to 1.21 be required for any reason relating to the enclosed materials, the Commissioner is authorized to deduct said fees from the same deposit account.

Respectfully submitted,

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EXHIBIT A

CLAIMS APPENDIX

1-9.   (Cancelled)

10.   A wireless communication system that is used with a wireless communication device and a position location system, the wireless communication device being capable of communicating with the position location system, the wireless communication system comprising:

a memory device for storing position location data for the wireless communication device;

a processor for determining trends in the position location data by recalling stored information from the memory device and processing the recalled information; and

a transmitter for transmitting targeted broadcasts to the wireless communication device at least based on the determined trends.

11.   A wireless communication system that is used with a wireless communication device and a position location system, the wireless communication device being capable of communicating with the position location system, the wireless communication system comprising:

a memory device for storing transaction data for the wireless communication device;

a processor for determining trends in the transaction data by recalling stored information from the memory device and processing the recalled information; and

a transmitter for transmitting targeted broadcasts to the wireless communication device at least based on the determined trends.

12.   The wireless communication system of claim 10, wherein the targeted broadcasts are transmitted to wireless communication devices currently located in a specific area.

13.   The wireless communication system of claim 10, wherein the targeted broadcasts are transmitted to wireless communication devices predicted to be located in a specific area.

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14.   A wireless communication system that is used with a wireless communication device and a position location system, the wireless communication device being capable of communicating with the position location system, the wireless communication system comprising:

a memory device for storing position location data for the wireless communication device;

a processor for recalling stored information from the memory device and processing the recalled information; and

a transmitter for transmitting targeted advertisement broadcasts to the wireless communication device at least based on the processed information.

15.   The wireless communication system of claim 14, wherein the memory device also stores transaction data for the wireless communication device.

16.   The wireless communication system of claim 15, wherein the transaction data includes usage transactions, responses to broadcasts, requests for information, or any combinations thereof.

17.   The wireless communication system of claim 14, wherein the memory device also stores preselected user information or preferences.

18.   A wireless communication system that is used with a wireless communication device and a position location system, the wireless communication device being capable of communicating with the position location system, the wireless communication system comprising:

a memory device for storing position location data for the wireless communication device;

a processor for recalling stored information from the memory device and processing the recalled information; and

a transmitter for transmitting targeted advertisement broadcasts to the wireless communication device at least based on the current location of the wireless communication device.

19. The wireless communication system of claim 18, wherein the memory device also stores transaction data for the wireless communication device.

20. The wireless communication system of claim 19, wherein the transaction data includes usage transactions, responses to broadcasts, requests for information, or any combinations thereof.

21. The wireless communication system of claim 18, wherein the memory device also stores preselected user information or preferences.

22. A wireless communication system comprising:

a memory device capable of storing data for a plurality of wireless communication devices;

a processor for processing the stored data and selecting a targeted broadcast audience, wherein the targeted broadcast audience comprises at least one wireless communication device; and

a transmitter for transmitting a targeted broadcast to each wireless communication device in the targeted broadcast audience.

23. The wireless communication system of claim 22, wherein the targeted broadcast audience is selected from the plurality of wireless communication devices.

24. The wireless communication system of claim 22, wherein the stored data comprises position location data for at least one wireless communication device.

25. The wireless communication system of claim 24, wherein the position location data comprises frequent routes traveled by at least one wireless communication device.

26. The wireless communication system of claim 22, wherein the stored data comprises transaction data relating to at least one wireless communication device.

27.   The wireless communication system of claim 26, wherein the transaction data comprises data selected from usage transactions, responses to broadcasts, requests for information, or any combination thereof.

28.   The wireless communication system of claim 22, wherein the stored data comprises preselected user information or preferences.

29.   The wireless communication system of claim 22, wherein the targeted broadcast audience is limited to wireless communication devices currently located in a specific area.

30.   The wireless communication system of claim 22, wherein the targeted broadcast audience is limited to wireless communication devices predicted to be located in a specific area.

31.   The wireless communication system of claim 22, wherein the processor selects the targeted broadcast audience by determining trends in the stored data for at least one wireless communication device.

32.   The wireless communication system of claim 24, wherein the processor selects the targeted broadcast audience by determining trends in the position location data for at least one wireless communication device.

33.   The wireless communication system of claim 26, wherein the processor selects the targeted broadcast audience by determining trends in the transaction data for at least one wireless communication device.

34.   The wireless communication system of claim 22, wherein the targeted broadcast comprises an advertisement.

35.   A method for sending a targeted broadcast in a wireless communication system comprising:

storing data for a plurality of wireless communication devices;

18

processing the stored data;

selecting a targeted broadcast audience from the processed data, wherein the targeted broadcast audience comprises at least one wireless communication device; and

transmitting the targeted broadcast to the targeted broadcast audience.

36.   The method of claim 35, wherein the targeted broadcast audience is selected from the plurality of wireless communication devices.

37.   The method of claim 35, wherein the stored data comprises position location data for at least one wireless communication device.

38.   The method of claim 37, wherein the position location data comprises frequent routes traveled by at least one wireless communication device.

39.   The method of claim 35, wherein the stored data comprises transaction data relating to at least one wireless communication device.

40.   The method of claim 39, wherein the transaction data comprises data selected from usage transactions, responses to broadcasts, requests for information, or any combination thereof.

41.   The method of claim 35, wherein the stored data comprises preselected user information or preferences.

42.   The method of claim 35, wherein the targeted broadcast audience is limited to wireless communication devices currently located in a specific area.

43.   The method claim 35, wherein the targeted broadcast audience is limited to wireless communication devices predicted to be located in a specific area.

44.   The method of claim 35, wherein the targeted broadcast audience is selected by determining trends in the stored data for at least one wireless communication device.

45.   The method of claim 37, wherein the targeted broadcast audience is selected by determining trends in the position location data for at least one wireless communication device.

46.   The method of claim 39, wherein the targeted broadcast audience is selected by determining trends in the transaction data for at least one wireless communication device.

47.   The method of claim 35, wherein the targeted broadcast comprises an advertisement.

EXHIBIT B

EVIDENCE APPENDIX

None

EXHIBIT C

RELATED PROCEEDINGS APPENDIX

None